



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 339 OF 2024
IN
CRIMINAL APPEAL NO. 161 OF 2024**

KADAR ISAK KHAN @ MATANWALA .. APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Keshav Chavan, for the applicant.
Mr.Saakshat Relekar, for respondent no.2.
Mr. S. A. Karmakar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 12, 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an interim application for bail in respect of the offence punishable under sections 376(2)(i), 506, 363 of the Indian Penal Code (hereafter 'IPC' for short) and under section 5(m) & 6 of the Protection of Children from Sexual Offences Act, 2012 (hereafter referred to as "POCSO Act") registered vide C.R. No. 19 of 2016 with Daighar Police Station.

3. The interim application is opposed by learned APP and learned counsel who has been appointed by this Court to represent the complainant.

4. The applicant is convicted for the offence punishable under sections 5(m) & 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 14 years and fine of Rs.5,000/-. The applicant is convicted for other offences the sentence to which is to run concurrently. The applicant was arrested on 30/01/2016 and is now in custody for more than 8 years and 2 months. The applicant has undoubtedly been committed for a serious offence. The appeal has been admitted and will be heard finally in due course. The applicant has undergone custody for more than half of the sentence imposed by the trial Court up till now.

5. Prior to the substitution of section 6 of POCSO Act with effect from 16/08/2019 substituted by Act 25 of 2019., the punishment for aggravated penetrative sexual assault was rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

6. Learned counsel for the respondent no.2 invited my attention to the findings recorded by the trial Court. It is submitted that on the basis of the evidence on record, for cogent reasons, the trial Court has rightly convicted the applicant for such a serious offence. It is therefore submitted that the applicant is not entitled for bail and instead of enlarging the applicant on bail, the appeal itself be heard finally. My attention is invited to the decision of the Supreme Court of India in **State of U.P. Vs. Sonu Kushwaha**¹ to contend that the trial Court has rightly held the accused guilty of offence of aggravated penetrative sexual assault punishable under section 6 of POCSO Act. My attention is also invited to the decision of the Supreme Court in ²**Nawabuddin Vs. State of Uttarakhand** to submit that no leniency can be shown to an accused who has committed the offences under the POCSO Act and particularly when the same is proved by adequate evidence before a Court of law. These decisions will undoubtedly guide this Court when the appeal is finally heard on merits. It is not possible for me to hear the appeal finally at this

1 Criminal Appeal No. 1633 of 2023 dated 05/07/2023

2 Criminal Appeal No. 144 of 2022 dated 08/02/2022

stage considering the pendency of the old matters. The appeal is unlikely to be heard finally any time soon in the near future. Considering that the applicant is 70 years of age and has already undergone 8 years and 2 months of his substantive sentence, in my opinion, the applicant can be enlarged on bail. The applicant is not reported to have any criminal antecedents. Considering that the victim is residing in the same vicinity, on instructions, learned counsel for the applicant submitted that the applicant will reside outside Mumbai/ Mumbai Suburban and Thane districts. The statement is accepted. Hence, the following order :-

ORDER

- (a) The interim application is allowed.
- (b) The applicant-Kadar Isak Khan @ Matanwala in connection with C.R. No.19 of 2016 registered with Daighar Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall report to the trial Court once in a year, on the first Monday of the concerned month between 11:00 a.m. and 1:00 p.m. commencing from April 2024.

(e) The applicant shall not enter Mumbai/ Mumbai Suburban and Thane districts after being released on bail except for reporting to the trial Court.

(f) The applicant shall inform the trial Court as well as the investigating officer the contact details as well as residential address while residing outside Mumbai/Mumbai Suburban and Thane districts.

(g) The applicant shall remain present at the time of hearing of this appeal.

8. The interim application is disposed of.

9. I appreciate the valuable assistance rendered by Mr.Saakshat Relekar, the learned Advocate, who appeared on behalf of respondent No.2 at my request in this proceeding. His engagement be regularized by the Maharashtra State Legal Services Authority.

(M. S. KARNIK, J.)